

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION

DESMOND KEYS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:08cv254 KS-MTP

RICK SMITH, ET AL

DEFENDANTS

AMENDED ORDER

This cause is before the Court on Motion to Amend Answer to Complaint [17] filed by Defendants, Jones County, Mississippi, Larry Dykes, and Alex Hodge. Fed. R. Civ. P. 15(a) provides that leave to amend pleadings “shall be freely given when justice so requires.” The Fifth Circuit has stated:

“We have stated that the District Court’s discretion does not permit denial of a motion to amend unless there is substantial reason to do so. Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594-598 (5<sup>th</sup> Cir. November, 1981) Two valid reasons we have recognized in the past are untimeliness and futility. Leffall v. Dallas Independent School District, 28 F.3d 521 (5<sup>th</sup> Cir. 1994).

This litigation has been pending in this court approximately six months and the Motion is not untimely. The futility of the amendment is to be determined at a later time and this Court certainly cannot say at this time that it is futile.

Additionally, it should be noted that the Defendants did plead the affirmative defense of statute of limitations in their Answer but did not specifically state that it was to Federal claims and Defendants reserved the right to amend their Answer and add defenses if additional matters were discovered through the discovery process. Apparently there is some issue as to the date Plaintiff’s cause of action accrued and the differences in the date would make a difference as to

whether or not the affirmative defense of statute of limitations is applicable. The later date for Plaintiff's injuries was apparently discovered only recently.

For the above reasons, this Court finds that the Motion to Amend the Answer as requested by the Defendants should be granted. This Court notes that the Amended Answer has been previously filed, and filing another copy of this subsequent to this Order would be futile. This Court finds that the previous Answer should be accepted as the Amended Answer of the Defendants *tunc pro nunc*.

SO ORDERED this the 8th day of May, 2009.

*s/ Keith Starrett*  
UNITED STATES DISTRICT JUDGE